IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4791 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SHAMUBHAI ZAVERBHAI PATEL - Petitioner(s)
Versus
STATE OF GUJARAT & 4 - Respondent(s)

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Appearance :

MR DEVANG T SHAH for Petitioner(s) : 1,
MS MAITHILI MEHTA, AGP for Respondent(s) : 1,4 - 5.
NOTICE NOT RECD BACK for Respondent(s) : 1 - 3.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 28/04/2006

ORAL JUDGMENT

1. By way of this petition under Article 227 of the Constitution of India, the petitioner has challenged the legality and validity of the judgment and order passed by the Gujarat Revenue

Tribunal dated 12th December, 2005 passed in revision application No. TEN-BS-276/93 in dismissing the same and confirming the order passed by the Deputy Collector, Olpad, Surat dated 27th April, 1993 passed in Tenancy Appeal No.11/1993.

2. The dispute is with regard to the land bearing Block No.266 situated at village Navi Pardi, Taluka Kamrej, District Surat. The said land was originally in the names of Manharlal Dhirajram and Babubhai Dhirajram i.e. Respondent Nos.2 and 3 herein and the said land came to be purchased by the petitioner by registered sale-deed dated 2nd September, 1987 and the name of the petitioner came to be mutated in the revenue record vide Entry No.2087 dated 19th October, 1987. It appears that the Deputy Collector, Olpad, Surat, cancelled the aforesaid mutation entry and directed the Mamlatdar & ALT, Kamrej, to initiate the proceedings under Section 84(C) of the Bombay Tenancy Act on the ground that the petitioner was not agriculturist on the date of purchase of the land in question i.e.

on 2nd September, 1987. The Mamlatdar & ALT, Kamrej, initiated the proceedings under Section 84(C) of the Bombay Tenancy Act and by its order dated 3rd November, 1992 declared that the transaction in question was in breach of Sections 2(6) and 63 of the Bombay Tenancy Act as firstly the petitioner was not holding the land within 8 kms., and that the prior permission of the Collector was not obtained and the Mamlatdar & ALT further passed an order directing the petitioner to restore the land in question to its original owner. Being aggrieved and dissatisfied with the order passed by the Mamlatdar & ALT, Kamrej, dated 3rd November, 1992, the petitioner preferred tenancy appeal being Tenancy Appeal No.11/1993 before the Deputy Collector, Olpad, Surat, and the Deputy Collector, Olpad, Surat, by its order dated 27th April, 1993 dismissed the said appeal confirming the order passed by the Mamlatdar & ALT, Kamrej. Being aggrieved and dissatisfied with the order passed by the Deputy Collector, Olpad, Surat, dated 27th April, 1993 passed in Tenancy Appeal No.11/1993,

the petitioner preferred revision application before the Gujarat Revenue Tribunal being revision application No. TEN-BS-276/93 and the Gujarat Revenue Tribunal accepting the submissions made on behalf of the State Government that the petitioner has not produced any documentary evidence and that the petitioner was neither an agriculturist nor agricultural labourer, dismissed the said revision application by impugned judgment and order. Being aggrieved and dissatisfied with the same, the petitioner preferred the present Special Civil Application under Article 227 of the Constitution of India.

3.Shri D.T.Shah, learned advocate appearing on behalf of the petitioner has submitted that the allegation against the petitioner was that the petitioner was not holding the agricultural land within 8 kms., of land and therefore, there was a breach of Sections 2(6) and 63 of the Bombay Tenancy Act. He has also further submitted that another allegation against the petitioner was that prior to purchase the land

in question, the prior permission of the Collector was not obtained. He has submitted that the finding given by the Gujarat Revenue Tribunal that the petitioner has not produced any documentary evidence to show that the petitioner was agriculturist at the time when the petitioner purchased the land, is factually incorrect. While relying upon the observations made by the Deputy Collector, he has submitted that the Deputy Collector has also observed that the petitioner was holding agricultural land at village Manghutha, Taluka Gariyadhar, District Bhavnagar. However, only dispute before the Deputy Collector was that the said agricultural land was not within 8 kms. He has submitted that now in view of the amendment in the Bombay Tenancy Act, more particularly, amended Section 2(6) by Gujarat Act No.4 of 1995 and Gujarat Act No.3 of 2001, now the requirement of agricultural land within 8 kms. is not required and the proceedings pending under Section 84(C) of the Act, would be abated. He has relied upon the judgment of the learned Single Judge of this Court

passed in case of ***Vishnubhai Ambalal Patel V/s. Shankerji Pnjjaji Thakor Another*** reported in **2002(3) GLH P-78** and therefore, it is requested to allow the present Special Civil Application.

4. Ms. Maithili Mehta, learned AGP while supporting the judgment and order passed by the Gujarat Revenue Tribunal has submitted that the Gujarat Revenue Tribunal has considered that the prior approval of the Collector was not obtained before purchasing the land in question in the year 1987 and that no documentary evidence has been produced to show that the petitioner was an agriculturist on the date on which the petitioner purchased the land in question and therefore, the Gujarat Revenue Tribunal was justified in dismissing the revision application and confirming the order passed by the Deputy Collector and therefore, it is requested to dismiss the present Special Civil Application.

5. Heard the learned advocates appearing on behalf of the parties.

6. At the outset it is required to be noted that the Gujarat Revenue Tribunal has accepted the submissions made on behalf of the State Government that the petitioner has not produced any documentary evidence to show that the petitioner was holding any agricultural land and/or he was agricultural labourer at the time when he purchased the land in question. However, on going through the finding of the Deputy Collector, the said observation and/or finding is factually incorrect. Even it was not the case before the Deputy Collector that the petitioner was not holding any agricultural land. On the contrary, the Deputy Collector has specifically held that the petitioner was holding agricultural land in Bhavnagar District and the only dispute before the Deputy Collector was that the petitioner was not holding agricultural land within 8 kms., and only on that base, it is held that there is a breach of Section 2(6) r.w. Section 63 of the Bombay Tenancy Act. The petitioner has also produced on record the Village

Form-6 to show that the petitioner was holding land at village Mangutha, Taluka Gariyadhar, District Bhavnagar, in the year 1986 and therefore, also the finding of the Gujarat Revenue Tribunal that the petitioner has not produced any documentary evidence to show that he was holding agricultural land, is factually incorrect and therefore, the only question which is required to be considered by this Court is as to whether it was necessary that the petitioner was required to hold the land within 8 kms., of the area. There is an amendment in Section 2(6) of the Bombay Tenancy Act and by Gujarat Act No. 4 of 1995, which came into force on April 6, 1996, the State Legislature deleted the portion beginning with the words “bearing land entire area” and ending with the words “one compact block” and also deleted Explanation 3 to Section 2(6) and since there was some doubt as to whether the said amendment was retrospective in nature, by Gujarat Act No.3 of 2001, the State Legislature has made it clear in unmistakable terms that the deletion was retrospective. Thus, the aforesaid

aspect came to be considered by the learned Single Judge of this Court in case of **Vishnubhai Ambalal Patel (Supra)** and it is held by the learned Single Judge that all the proceedings pending under Section 84(C) of the Act are required to be declared abated. Considering the amended provision and the judgment of the learned Single Judge of this Court in case of **Vishnubhai Ambalal Patel (Supra)**, the judgment and order passed by the Gujarat Revenue Tribunal is required to be quashed and set aside and the proceedings are required to be abated.

7. For the reasons stated above, the petition is allowed. The judgment and order passed by the Gujarat Revenue Tribunal confirming the order passed by the lower authorities is hereby quashed and set aside and the respondents authorities are restrained from continuing with the proceedings under Section 84(C) of the Bombay Tenancy & Agricultural Lands Act; 1948 in respect of the land in question as the said proceedings have abated in

view of the Gujarat Act No.4 of 1995 and No.3 of 2001.

8.Rule is made absolute to the aforesaid extent, however, there will be no order as to costs.

(M.R.SHAH, J.)

kdc.